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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

- - - - -

THE VIDEOTAPED DEPOSITION OF
BERNARD ENGEL, PhD, produced as a witness on
behalf of the Defendants in the above styled and
numbered cause, taken on the 15th day of January,
2008, in the City of Tulsa, County of Tulsa, State
of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

A P P E A R A N C E S

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TULSA FREELANCE REPORTERS
918-587-2878

1 Q Okay. What, in your discipline as a
2 biological engineer with particular emphasis on
3 agriculture, would you ordinarily employ to evaluate
4 whether or not the poultry grower shown as an X on
5 Exhibit 21 is contributing to the -- let's work with 10:44AM
6 something you're more familiar with -- the
7 phosphorus levels in the Illinois River or Lake
8 Tenkiller?

9 MR. PAGE: I'm going to object. That goes
10 beyond the scope of the opinions he's offering in 10:45AM
11 this case, Mr. George. This deposition is limited
12 to the opinions he's providing in this affidavit,
13 and he's pointed out that he's not offering an
14 opinion on phosphorus transported at this time.

15 MR. GEORGE: I'm not asking for his opinion 10:45AM
16 on phosphorus transport. I'm asking --

17 MR. PAGE: He's --

18 MR. GEORGE: Hang on. Let me finish my
19 statement and then you can respond to it. I'm
20 asking him to explain to me how he would go about 10:45AM
21 examining that issue given his expertise.

22 MR. PAGE: I think that gets into the
23 predicate for opinions he may be asked to give later
24 on in this case, and so it's improper at this time.

25 MR. GEORGE: Are you instructing the 10:45AM

1 witness not to answer?

2 MR. PAGE: So what you are doing now is
3 opening up Mr. Engel for a deposition for the whole
4 part of this case. That would be considered at this
5 point confidential information in Rule 26.

10:46AM

6 MR. GEORGE: I don't agree that's what I'm
7 doing. Are you instructing the witness not to
8 answer?

9 MR. PAGE: Let me take a break and confer
10 with my co-counsel.

10:46AM

11 VIDEOGRAPHER: We're now off the Record.
12 The time is 10:45 a.m.

13 (Following a short recess at 10:46
14 a.m., proceedings continued on the Record at 10:57
15 a.m.)

10:57AM

16 VIDEOGRAPHER: We are back on the Record.
17 The time is 10:57 a.m.

18 MR. PAGE: Mr. George, your question, as I
19 understood it, relates to phosphorus and perhaps
20 other nutrients and modeling of those substances.
21 The court has set a scheduling order in this case
22 that requires a production of any information
23 concerning nutrients and expert opinions on April
24 1st of this year. Conceivably Dr. Engel said he's
25 not providing any information on modeling of

10:57AM

10:58AM

1 bacteria; therefore, your question is improper. If
2 you can restate it to relate to the opinions he's
3 giving in this case at this time on the preliminary
4 injunction, I think would be appropriate, but your
5 question is inappropriate and premature and,
6 therefore, I request that the witness not answer any
7 questions with regard to phosphorus modeling until
8 after the court ordered deadline has passed.

10:58AM

9 MR. GEORGE: Are you instructing the
10 witness not to answer the question, Mr. Page?

10:58AM

11 MR. PAGE: If your question goes to
12 phosphorus modeling, yes.

13 MR. GEORGE: I don't know it went to
14 phosphorus modeling, but let me try it again and,
15 David, all I'd ask is that when you are instructing
16 the witness not to answer, just be clear so I know
17 that we have a situation that perhaps requires
18 relief of the court.

10:58AM

19 MR. PAGE: Well, maybe I misunderstood your
20 question, and I interpreted your question, Mr.
21 George, as requesting modeling of phosphorus.

10:59AM

22 Q With respect to Deposition Exhibit 21, Mr.
23 Engel, that's in front of you and my hypothetical
24 poultry grower, the X in the far right-hand corner
25 of the Illinois River watershed, do you agree with

10:59AM